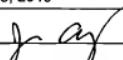


## PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

1001.1705101

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]

on DECEMBER 8, 2010Signature Typed or printed JONATHON ACHEY  
name

Application Number

10/828,699

Filed

APRIL 21, 2004

First Named Inventor

KAREN M. CHEVES

Art Unit

3767

Examiner

ANDREW M. GILBERT

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

 applicant/inventor. assignee of record of the entire interest.  
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.  
(Form PTO/SB/96) attorney or agent of record.Registration number 57,222

Signature

JASON W. BURGMAYER

Typed or printed name

 attorney or agent acting under 37 CFR 1.34.Registration number if acting under 37 CFR 1.34 12/18/10

Telephone number

12/18/10

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.  
Submit multiple forms if more than one signature is required, see below\*.

\*Total of \_\_\_\_\_ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application. This collection of information is mandatory for this class of case. Any comments or the amount of time you require to complete this form and suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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**UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Karen M. Cheves et al. Confirmation No.: 5388  
Serial No.: 10/828,699 Examiner: Andrew M. Gilbert  
Filing Date: April 21, 2004 Group Art Unit: 3767  
Docket No.: 1001.1705101 Customer No.: 11050  
Title: TRACTION CUTTING BALLOON

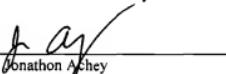
**PRE-APPEAL CONFERENCE BRIEF**

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**CERTIFICATE FOR ELECTRONIC TRANSMISSION:**

The undersigned hereby certifies that this paper or papers, as described herein, are being electronically transmitted to the U.S. Patent and Trademark Office on this 8th day of December, 2010.

By \_\_\_\_\_

  
Jonathan Achey

Dear Sir:

Applicants have received and carefully reviewed the Final Office Action of September 8, 2010 and the Advisory Action of November 23, 2010. Claims 15 and 26-33 remain pending in the application. Reconsideration of the rejections and further examination are respectfully requested. Applicants hereby request a pre-appeal conference and file this pre-appeal conference brief concurrently with a Notice of Appeal. Favorable consideration of the claims is respectfully requested in view of the following showings of clear error in the rejections.

The Final Office Action indicates that claim 15 is rejected under 35 U.S.C. §102(e) as being anticipated by Wu et al., U.S. Pat. App. Pub. No. 2004/0243156. Furthermore, the Final Office Action indicates that claims 15 and 26-33 are rejected under 35 U.S.C. §102(e) as being anticipated by or, in the alternative, under 35 U.S.C. §103(a) as obvious over Wu et al., U.S. Pat. App. Pub. No. 2004/0243156. Applicants note that the rejection under 35 U.S.C. §103(a) has been withdrawn in the Advisory Action in view of Applicants' showing of common ownership between Wu et al. and the current application at the time of the invention under the provisions of

35 U.S.C. §103(c), leaving only the rejections of claims 15 and 26-33 under 35 U.S.C. §102(e). Applicants respectfully traverse this rejection.

Claim 15, among other limitations, recites, “wherein the means for cutting and means for gripping are defined by a series of undulations on the cutting blade in the first fully inflated configuration.” In the Final Office Action, it was indicated that “Wu is silent regarding any undulations of the blades when the balloon is inflated.” See Final Office Action, at paragraph 7.

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” M.P.E.P. §2131, quoting *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). The admission in the Final Office Action that Wu et al. does not teach undulations of the blades when the balloon is inflated evidences that the §102(e) rejection of the currently pending claims is inappropriate.

Furthermore, in responding the Applicant’s previously presented remarks regarding the teachings of Kelly, U.S. Pat. App. Pub. No. 2005/0228343, it was stated in the Final Office Action that “One of ordinary skill in the art at the time of the invention would have found it obvious that a metallic cutting blade that is similar to knife would hold its structural configuration as the balloon transitions from an deflated to fully inflated configuration, thus maintaining the undulations in the fully inflated state.” Final Office Action, at paragraph 8. While Applicants do not agree with this assertion, it appears that this argument presented in the Final Office Action is formulated under the provisions of 35 U.S.C. §103(a).

Applicants maintain that even though the blade disclosed by Wu et al. may be formed from metal, the blade does not necessarily possess the rigidity to ensure that the undulations of the blade would remain when the balloon is inflated. For example, as noted previously the cutting blades disclosed in Kelly may be able to bend and flex while mounted to the balloon. See Kelly, at paragraph 0022. Kelly, which teaches the cutting blades may be formed of any suitable material such as a metal, metal alloy, or polymer, does not distinguish between these materials or indicate metal materials would not permit the described bending or flexing of the cutting blade when mounted to the balloon, concluding that any disclosed material, including metal, would permit the disclosed bending or flexing of the cutting blade while mounted to the balloon. In consideration of the size of such a cutting blade (e.g., on the order of 0.006 inches wide) a metal material would not necessarily be sufficiently rigid to prevent bending or flexing

of the cutting blade. Furthermore, the inclusion of the joining member 38 of Kelly does not negate such a conclusion. The blade itself would need to be able to bend and flex, as described, regardless of the presence of the joining member 38 since the presence of the joining member 38 would not make an otherwise rigid blade become flexible. As such, Applicants assert that maintaining the undulations of Wu's blade when the balloon is inflated is not an inherent property of Wu's blade.

As a result, Applicants assert that Wu et al. at least does not expressly, impliedly or inherently disclose the noted limitations of claim 15. Withdrawal of the §102(e) rejections of the claims is respectfully requested.

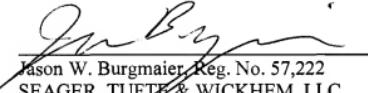
Reconsideration and further examination of the rejections are respectfully requested. It is respectfully submitted that all pending claims are now in condition for allowance. Issuance of a Notice of Allowance in due course is requested. If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 677-9050.

Respectfully submitted,

Karen M. Cheves et al.

By their Attorney,

Date: Dec 8, 2010

  
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